

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. MCI WORLDCOM, INC., Respondent.	DOCKET NO. FCU-03-21
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ORDER ESTABLISHING ISSUES ON APPEAL

(Issued December 1, 2004)

On March 24, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties against MCI WorldCom, Inc. (MCI), pursuant to Iowa Code § 476.103 (2003) and 199 IAC 22.23, for an alleged violation of the Board's slamming rules.

On January 20, 2004, the Board docketed the proceeding as a formal contested case and, on March 29, 2004, assigned the docket to the Board's administrative law judge (ALJ) to establish a procedural schedule, set a hearing date, and conduct the proceedings. A hearing was held in this docket on July 14, 2004.

Post-hearing briefs were filed by both parties on August 13, 2004, and reply briefs were submitted on August 23, 2004.

On November 4, 2004, a proposed decision was issued by the ALJ stating that MCI violated Iowa Code § 476.103 and the Board's slamming rules, but that civil penalties were not to be assessed.

Subrule 199 IAC 7.8(2) requires that appeals from the proposed decision of the ALJ be filed within 15 days of the date the decision is issued. An appeal was timely filed by Consumer Advocate on November 12, 2004. MCI also filed a timely appeal of the proposed decision on November 19, 2004, in addition to a response to Consumer Advocate's appeal.

Pursuant to 199 IAC 7.8(2)"d," the Board must issue a ruling on the issues to be decided on appeal within 20 days of the date of the notice of appeal. The Board will set out the issues that will be considered on appeal and will set a date for filing briefs on those issues. The Board may request additional information from the parties if the receipt of such information is necessary to allow the Board to reach a final decision.

ISSUES FOR CONSIDERATION ON APPEAL

1. Whether MCI violated Iowa Code § 476.103 and Board rule 199 IAC 22.23

MCI asserts that the ALJ erred in her legal conclusion that MCI violated Iowa Code § 476.103 and 199 IAC 22.23. Specifically, MCI states that it was not in

violation of any specific provision of 476.103. In addition, MCI states that it complied with the requirements of 199 IAC 22.23 and, therefore, was not in violation of the Board's rule. Consumer Advocate has not responded to MCI's assertion.

The Board finds that this issue should be considered on appeal.

2. Whether civil penalties should be assessed against MCI

Consumer Advocate asserts that the ALJ erred in refusing to assess civil penalties against MCI. Consumer Advocate sets forth several subsidiary errors that it states are relevant to this issue.

MCI responds by stating that there is no basis for the assessment of civil penalties in this case. Specifically, MCI maintains that it did not violate either Iowa law or the Board's rules and, therefore, there can be no assessment of civil penalties.

The Board finds that this issue should also be considered on appeal.

The Board will allow the parties to file briefs concerning the issues the Board has identified as issues to be decided on appeal. The Board will not schedule oral arguments at this time. Additionally, the Board reserves the right to address other issues that it finds to be relevant during its consideration of the proposed order.

IT IS THEREFORE ORDERED:

Simultaneous initial briefs addressing the issues to be decided by the Utilities Board on appeal, as described in this order, shall be filed on or before January 10, 2005. Reply briefs shall be filed on or before January 31, 2005.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 1st day of December, 2004.